

**TCEQ PERMIT NO. WQ0011787001**

2010 JAN 11 PM 2: 32

<b>APPLICATION BY</b>	§	<b>BEFORE THE</b>	<b>CHIEF CLERKS OFFICE</b>
	§		
<b>THE CITY OF BULLARD</b>	§	<b>TEXAS COMMISSION ON</b>	
	§		
	§	<b>ENVIRONMENTAL QUALITY</b>	

## **EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT**

The Executive Director of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Public Comment (Response) on the City of Bullard's (Applicant) application and Executive Director's preliminary decision. As required by 30 Texas Administrative Code (TAC) Section 55.156, before a permit is issued, the Executive Director prepares a response to all timely, relevant and material, or significant comments. The Office of the Chief Clerk received timely filed comment letters from the following persons: Richard Lowerre of Lowerre, Frederick, Perales, Allmon & Rockwell, Attorneys at Law, representing the Texas Conservation Alliance (TCA) and Dr. Adrian Van Dellen, and Scott Rhodes of McGinnis, Lochridge & Kilgore, L.L.P., representing HRC Cherokee Tree Farm, L.P. (HRC). This response addresses all such timely public comments received, whether or not withdrawn. If you need more information about this permit application or the wastewater permitting process, please call the TCEQ Office of Public Assistance at 1-800-687-4040. General information about the TCEQ can be found at our website at [www.tceq.state.tx.us](http://www.tceq.state.tx.us).

## **BACKGROUND**

### Description of Facility

The City of Bullard has applied to the TCEQ for a major amendment to TPDES Permit No. WQ0011787001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 213,000 gallons per day (gpd) to a daily average flow not to exceed 438,000 gpd. The wastewater treatment facility serves the City of Bullard. The facility is located approximately 2,600 feet southwest of the Bullard School and approximately 3,000 feet west-southwest of the intersection of Farm-to-Market Road 344 and Oak Street in Cherokee County, Texas.

The treated effluent is discharged to an unnamed tributary; then to Flat Creek; then to the Neches River Below Lake Palestine in Segment No. 0604 of the Neches River Basin. The unclassified receiving water uses are no significant aquatic life use for the unnamed tributary and high aquatic life use for Flat Creek. The designated uses for Segment No. 0604 are high aquatic life use, public water supply and contact recreation. The effluent limitations in the draft permit will

maintain and protect the existing instream uses. In accordance with 30 TAC § 307.5 and the TCEQ implementation procedures (January 2003) for the Texas Surface Water Quality Standards (TSWQS), an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Flat Creek, which has been identified as having high aquatic life use. Existing uses will be maintained and protected. Degradation means "a lowering of water quality by more than a de minimis extent, but not to the extent that an existing use is impaired." 30 TAC § 307.5(b)(2). The preliminary determination can be reexamined and may be modified if new information is received.

Segment 0604 is currently listed on the State's inventory of impaired and threatened waters (the 2008 Clean Water Act 303(d) list). The listing is specifically for lead in water from SH 21 to US 84. This is an application for a public domestic wastewater treatment facility; the facility does not receive significant industrial wastewater contributions, therefore the effluent from this facility should not contribute to the impairment of this segment for lead.

#### Procedural Background

The permit application was received on April 22, 2009 and declared administratively complete on June 3, 2009. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published on July 1, 2009 in the *Tyler Morning Telegraph* and the *Jacksonville Daily Progress*. The Notice of Application and Preliminary Decision (NAPD) for a Water Quality Permit was published on October 14, 2009 in the *Jacksonville Daily Progress*. The public comment period ended on November 13, 2009. This application is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999.

### **COMMENTS AND RESPONSES**

#### **COMMENT 1:**

TCA and Dr. Van Dellen state that the Applicant's compliance history requires either: (1) denial of the application, or (2) additional conditions and terms in the permit, such as increased monitoring and reporting requirements to minimize the likelihood of future violations. HRC comments that, due to the Applicant's compliance history, the Applicant will not be able to demonstrate that it can or will be able to comply with the permit for which it has now applied and should be required to demonstrate that it has the financial, managerial and operational ability to operate the wastewater treatment plant in compliance with state requirements.

#### **RESPONSE 1:**

The Applicant is required to operate in compliance with the Texas Water Code, TCEQ's rules and the terms of the permit. TCEQ may issue a permit if the application meets all administrative and technical requirements to protect water quality.

Section 5.753(e) of the Texas Water Code requires the TCEQ to use a facility's compliance

history when making decisions relating to the renewal of a permit. The compliance history for the customer/owner and the regulated entity (site) is reviewed for the five-year period prior to the date the permit application was received by the Executive Director. The Applicant's company and site have been rated and classified pursuant to 30 TAC Chapter 60. A customer/owner and site may have one of the following classifications and ratings:

High: rating  $< 0.10$  (above-average compliance record)

Average by Default: rating  $= 3.01$  (these are for sites which have never been investigated)

Average:  $0.10 < \text{rating} < 45$  (generally complies with environmental regulations)

Poor:  $45 < \text{rating}$  (performs below average)

The Applicant's compliance history ratings for 9/1/2009—a customer rating of 2.23 and a site rating of 2.23—are both within the average classification range. The compliance history report indicates no final enforcement orders, court judgments, consent decrees or criminal convictions from the State of Texas or the federal government. Input from TCEQ Region 5 indicates that the maintenance of the facility is fair, though the facility needs additional treatment capacity.

The compliance history for a facility is always available to the public. The compliance history may be viewed on the TCEQ website at <http://www.tceq.state.tx.us/oce/ch/>. For copies of more detailed investigation reports, you may contact the TCEQ Office of Administrative Services, Customer Service Center, at 512-239-3282 to submit an open records request.

Title 30 Texas Administrative Code Section 305.126(a) and the operational requirements of the existing permit specify that whenever flow measurements for any domestic sewage treatment facility reach 75 percent of the permitted daily average flow for three consecutive months, the permittee must initiate engineering and financial planning for expansion and/or upgrading the domestic wastewater treatment and/or collection facilities, and that whenever flows reach 90 percent of the permitted daily average flow for three consecutive months, the permittee shall obtain necessary authorization from the Commission to commence construction of the necessary additional treatment and/or collection facilities. The Applicant has been notified that flows at the plant have exceeded 90 percent of the permitted daily flow for three consecutive months during 2007, 2008 and 2009. The subject application is for a major amendment to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 213,000 gpd to a daily average flow not to exceed 438,000 gpd.

The Applicant is responsible for operating the facility; however, the Applicant may contract with an individual operator, company, and other entity to operate the facility. Anyone who operates a domestic wastewater facility is required to hold a current wastewater operator registration issued by the TCEQ. TCEQ rules, codified at 30 TAC Chapter 30, require the facility to be operated by a licensed wastewater operator who must hold a specific level of license based on the type of treatment and permitted daily average flow. The draft permit requires that this Category C facility must be operated by a chief operator or an operator holding a Category C license or higher. The rules state that the chief operator or operator with the required level of license or higher must be present at the facility five days per week and available by phone or pager seven days per week. The amount of time per day that the operator is required to be onsite is not stipulated in the rules.

The Applicant is required to analyze the treated effluent prior to discharge and to provide monthly reports to the TCEQ that include the results of the analyses. The Applicant may collect and analyze the effluent samples itself, or it may contract with a third party for either or both the sampling and analysis. However, all samples must be collected and analyzed according to 30 TAC Chapter 319, Subchapter A, Monitoring and Reporting System. Effective July 1, 2008, all laboratory tests performed must meet the requirements of 30 TAC Chapter 25, Environmental Testing Laboratory Accreditation and Certification. The Applicant is required to notify the agency if the effluent does not meet the permit limits according to the requirements in the permit. In addition, the TCEQ regional staff may sample the effluent during routine inspections or in response to a complaint.

The Applicant is required to report any unauthorized discharge to TCEQ within 24 hours. If the Applicant fails to report the unauthorized discharge or bypass to TCEQ within the prescribed time period, the Applicant may be subject to enforcement action. TCEQ conducts periodic inspections of wastewater facilities and also conducts investigations based on complaints received from the public. To report complaints about the facility, please contact the Tyler Regional Office at (903) 535-5100, or call the 24-hour toll-free Environmental Complaints Hotline at 1-888-777-3186. Citizen complaints may also be filed on-line at [www.tceq.state.tx.us/compliance/complaints/index.html](http://www.tceq.state.tx.us/compliance/complaints/index.html). If the facility is found to be out of compliance with the terms or conditions of its permit or with TCEQ regulations, it may be subject to enforcement.

**COMMENT 2:**

TCA and Dr. Van Dellen comment that the application does not include a complete list of all names and addresses of persons affected by the application. TCA and Dr. Van Dellen comment that there has not been proper notice of the application.

**RESPONSE 2:**

The applicant for a major amendment to a wastewater discharge permit is required to include the following information in the permit application:

a topographic map, ownership map, county highway map, or a map prepared by a Texas licensed professional engineer, Texas licensed professional geoscientist, or a registered surveyor which shows the facility and each of its intake and discharge structures and any other structure or location regarding the regulated facility and associated activities. Maps must be of material suitable for a permanent record, and shall be on sheets 8-1/2 inches by 14 inches or folded to that size, and shall be on a scale of not less than one inch equals one mile. *The map shall depict the approximate boundaries of the tract of land owned or to be used by the applicant and shall extend at least one mile beyond the tract boundaries . . .*

30 TAC § 305.45(a)(6), emphasis added.

If the application is for the disposal of any waste into or adjacent to a watercourse, the application shall show the ownership of the tracts of land adjacent to the

treatment facility and *for a reasonable distance along the watercourse from the proposed point of discharge*. The applicant shall list on a map, or in a separate sheet attached to a map, the names and addresses of the owners of such tracts of land as can be determined from the current county tax rolls or other reliable sources. The application shall state the source of the information.

30 TAC § 305.48(a)(2), emphasis added. The applicant is required to certify that the submitted application is accurate. The TCEQ mails notice of the application to the affected landowners and others on the mailing list for the application, which is maintained by the Office of the Chief Clerk.

Additionally, for major amendments to wastewater discharge permits, the agency prepares two public notices: the Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) and the Notice of Application and Preliminary Decision for a Water Quality Permit (NAPD). The Applicant is required to publish these notices in a local newspaper and to provide a copy of the application, draft permit and Executive Director's Preliminary Decision in a public place for viewing and copying. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published on July 1, 2009 in the *Tyler Morning Telegraph* and the *Jacksonville Daily Progress*. The Notice of Application and Preliminary Decision (NAPD) for a Water Quality Permit was published on October 14, 2009 in the *Jacksonville Daily Progress*. A review of the application indicates that the Applicant complied with all applicable water quality permitting and notice requirements. The commenters did not provide information to the Executive Director that would lead him to conclude that notice was deficient in this case.

### **COMMENT 3:**

TCA and Dr. Van Dellen comment that the application does not show how the operations will prevent significant degradation of water quality in the receiving waters. TCA and Dr. Van Dellen comment that the application does not show how water quality standards will be met. TCA and Dr. Van Dellen comment that the discharge will result in violations of water quality standards and degradation of the water quality in the receiving waters. HRC comments that the applicant has failed to demonstrate that the application will not result in the violation of State water quality standards for the receiving stream. HRC comments that the level of treatment proposed in the draft permit may result in degradation of the water quality of Flat Creek and HRC's proposed reservoirs. HRC also comments that, due to intermittent flows in Flat Creek, the discharge could have an adverse impact on recreational reservoirs that HRC intends to develop on Flat Creek downstream of the discharge point.

### **RESPONSE 3:**

As part of the permit application process, the ED determines the uses of the receiving water and sets effluent limits that are protective of those uses. In this case, the unclassified receiving water uses are no significant aquatic life use for the unnamed tributary and high aquatic life use for Flat Creek. The designated uses for Segment No. 0604 are high aquatic life use, public water supply and contact recreation. These designated uses and the associated criteria contained in Appendix A of the TSWQS for Segment 0604 of the Neches River Basin were used to evaluate this permit application.

The draft permit includes effluent limitations and monitoring requirements to ensure that the proposed discharge will not violate the Texas Surface Water Quality Standards for the protection of surface water, groundwater, aquatic and terrestrial life, and human health. It also includes additional requirements for the wastewater treatment system to ensure the protection of water quality and human health; and for the disposal of domestic sludge generated from the wastewater treatment facility. Based on modeling results for the proposed effluent flow of 438,000 gpd, effluent limits of 10 mg/L 5-day Carbonaceous Biochemical Oxygen Demand (CBOD<sub>5</sub>), 15 mg/l Total Suspended Solids (TSS), 3 mg/L Ammonia Nitrogen (NH<sub>3</sub>-N), and 6 mg/L Dissolved Oxygen (DO) are predicted to be necessary to ensure that stream receiving water standards are met.

In accordance with §307.5 and the TCEQ implementation procedures (January 2003) for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Flat Creek, which has been identified as having a high aquatic life use. Degradation means "a lowering of water quality by more than a de minimis extent, but not to the extent that an existing use is impaired." 30 TAC § 307.5(b)(2). Existing uses should be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

With regard to the planned reservoirs, only existing waterbodies are evaluated for purposes of determining potential impacts to receiving waters. If reservoirs are developed after issuance of this permit, impacts to such reservoirs may be evaluated when the permit comes up for renewal, depending on the nature and location of the reservoirs.

**COMMENT 4:**

TCA and Dr. Van Dellen comment that the application does not contain adequate facility designs and specifications.

**RESPONSE 4:**

The final design of the facility is not required as part of the wastewater permit application; however, the draft permit requires the Applicant to meet the design criteria requirements for domestic wastewater treatment plants prior to construction of the facility. The rules in 30 TAC Chapter 217, Design Criteria for Domestic Wastewater Systems, provide for permit issuance before final design of the facility. Other Requirements No. 6 and No. 7 of the draft permit require the Applicant to clearly show how the treatment system will meet the permitted effluent limitations required for each phase of the draft permit. The draft permit requires the Applicant to submit to the TCEQ Wastewater Permitting Section a summary submittal letter for the design criteria, meeting the requirements of 30 TAC Section 217.6(c), prior to construction of the final phase of the wastewater treatment facilities. The summary letter must be signed and sealed by a licensed professional engineer. If requested by the Wastewater Permitting Section, the permittee must submit plans, specifications, and a final engineering design report that comply with the rules. In addition, a licensed professional engineer must certify that the wastewater treatment facility was constructed according to the plans and specifications.

**COMMENT 5:**

TCA and Dr. Van Dellen comment that the application does not address groundwater contamination, and HRC comments that the applicant has not demonstrated that the application and draft permit will not adversely affect the groundwater used by HRC.

**RESPONSE 5:**

The draft permit was prepared in accordance with the Texas Surface Water Quality Standards, which are designed to be protective of aquatic life, human health and the environment. The review process for surface water quality is conducted by the Standards Implementation Team and Water Quality Assessment Team. According to the Texas Groundwater Protection Strategy, AS-188 (February 2003), if the surface water quality is protected, then the groundwater quality in the vicinity will likewise be protected.

**COMMENT 6:**

TCA and Dr. Van Dellen comment that the facility will not provide for needed odor controls and has not demonstrated adequate buffer zones. TCA and Dr. Van Dellen also comment that the facility will not provide controls for other nuisance conditions, including noise, light and dust.

**RESPONSE 6:**

TCEQ rules require domestic wastewater treatment facilities to meet buffer zone requirements for the abatement and control of nuisance odors according to 30 TAC Section 309.13(e). These rules provide three options for applicants to use to satisfy the nuisance odor abatement and control requirement. The Applicant can meet this requirement by owning the buffer zone area, by obtaining a restrictive easement from the adjacent property owner(s) for any part of the buffer zone not owned by the Applicant, or by providing odor control. The draft permit requires the applicant to meet the buffer zone requirements by ownership and legal restrictions prohibiting residential structures within the part of the buffer zone not owned by the permittee.

Texas Water Code Section 26.121 authorizes discharges into water in the state, provided the discharger obtains a permit from the Commission. The TCEQ reviews permit applications to determine if the proposed discharge will violate the Texas Surface Water Quality Standards (TSWQS), codified in 30 TAC Chapter 307. Pursuant to 30 TAC Chapter 309, Subchapter B, the TCEQ has the authority to condition the issuance of a wastewater permit on the selection of a site that minimizes impacts on ground and surface waters, and to minimize certain nuisance conditions. The Commission does not have the authority to address concerns about noise, light and dust when determining whether to issue a wastewater permit. The scope of the Agency's regulatory jurisdiction does not affect or limit the ability of a landowner to seek relief from a court in response to activities that interfere with the landowner's use and enjoyment of their property.

**COMMENT 7:**

TCA and Dr. Van Dellen comment that the application does not provide for meeting other location requirements.

**RESPONSE 7:**

The Applicant has indicated in the application that the facility complies with the unsuitable site

characteristics found in 30 TAC 309.13(a) through (d). (Subpart 30 TAC 309.13(e) is discussed above, and Subpart 30 TAC 309.13(b) is discussed further below.)

**COMMENT 8:**

TCA and Dr. Van Dellen comment that the application does not provide for the protection of wetlands. TCA and Dr. Van Dellen comment that the location of the facilities, including the outfall and the discharge, will adversely affect wetland areas.

**RESPONSE 8:**

According to 30 TAC § 309.13(b), a wastewater treatment plant unit cannot be located in wetlands. However, this prohibition does not apply to manmade constructed wetlands. The Applicant has indicated that no wetland or part of a wetland will be affected by this facility. The commenters did not provide any information to indicate that the facility is located on naturally occurring wetlands.

The United States Army Corps of Engineers (Corps) regulates certain activities occurring in waters of the United States, including wetlands, under Section 404 of the Clean Water Act and Section 10 of the River and Harbors Act of 1899. A Corps permit is required for the discharge of dredged or fill material into waters of the U.S., including wetlands. It is the responsibility of the Applicant to obtain all necessary authorizations, including a Federal Clean Water Act Chapter 404 Dredge and Fill permit, if required.

As was discussed in Response No. 3, the draft permit contains effluent limitations and monitoring requirements that are designed to be protective of surface water, groundwater, aquatic and terrestrial life, and human health. The effluent limits should likewise be protective of wetland water quality functions.

**COMMENT 9:**

TCA and Dr. Van Dellen and HRC comment that the Applicant has not demonstrated that it has complied with TCEQ's regionalization policy.

**RESPONSE 9:**

Texas Water Code, Section 26.0282 provides that in considering the issuance, amendment, or renewal of a permit to discharge waste, the Commission may deny or alter the terms and conditions of the proposed permit, amendment, or renewal based on consideration of need, including the expected volume and quality of the influent and the availability of existing or proposed area wide or regional waste collection, treatment, and disposal systems not designated as area wide or regional disposal systems by Commission Order. This section is expressly directed to the control and treatment of conventional pollutants normally found in domestic wastewater. According to Section 26.081 of the Texas Water Code, TCEQ has been mandated to "encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state."

The Domestic Wastewater Permit Application Technical Report requires information concerning regionalization of wastewater treatment plants. The Applicant is required to review a three-mile



area surrounding the facility to determine if there is a wastewater treatment plant or sewage collection lines within the area that the permittee can use. The Applicant has indicated in the application that the service area is not located inside another utility's CCN, and that there are not any domestic permitted wastewater treatment facilities and/or collection systems located within a three mile radius of the facility. Finally, Operational Requirements, No 8(c) in the draft permits reads:

Permits for domestic wastewater treatment plants are granted subject to the policy of the Commission to encourage the development of area-wide waste collection, treatment, and disposal systems. The Commission reserves the right to amend any domestic wastewater permit in accordance with applicable procedural requirements to require the system covered by this permit to be integrated into an area-wide system, should such be developed; to require the delivery of the wastes authorized to be collected in, treated by or discharged from said system, to such area-wide system; or to amend this permit in any other particular to effectuate the Commission's policy. Such amendments may be made when the changes required are advisable for water quality control purposes and are feasible on the basis of waste treatment technology, engineering, financial, and related considerations existing at the time the changes are required, exclusive of the loss of investment in or revenues from any then existing or proposed waste collection, treatment or disposal system.

**COMMENT 10:**

TCA and Dr. Van Dellen comment that the information is not properly verified or sealed by a person qualified to file such information.

**RESPONSE 10:**

The Applicant certified under penalty of law that the application document and all attachments were prepared under the Applicant's direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted.

**COMMENT 11:**

TCA and Dr. Van Dellen comment that the application does not demonstrate that best available technologies are being used.

**RESPONSE 11:**

Secondary treatment standards are defined in 30 TAC Chapter 309. In addition, the State of Texas has established a state water quality management program and a continuing planning process which sets forth the strategy and procedures for accomplishing the management program's objectives. Essential elements of the program include updates of basin plans, total maximum daily loads and wasteload evaluations by basin segments. In order to achieve compliance with water quality standards within certain segments, more stringent effluent quality limitations other than basic secondary treatment may be required to protect water quality. Best available technology, however, is not used to determine effluent limits for municipal wastewater discharges.

**COMMENT 12:**

TCA and Dr. Van Dellen comment that the draft permit is inadequate in that it fails to provide

the character of the discharge, flow limitations and adequate monitoring and reporting requirements. TCA and Dr. Van Dellen comment that the application does not provide for adequate monitoring of the receiving waters.

**RESPONSE 12:**

The draft permit includes effluent limitations and monitoring requirements for CBOD<sub>5</sub>, TSS, NH<sub>3</sub>-N, DO, chlorine residual and pH to ensure that the proposed wastewater treatment plant meets water quality standards for the protection of surface water quality, groundwater, and human health according to TCEQ rules and policies. The draft permit includes additional requirements for the wastewater treatment system to ensure the protection of water quality and human health. The draft permit includes requirements for the disposal of domestic sludge generated from the wastewater treatment facility based on TCEQ rules. The Executive Director has determined that the draft permit is protective of the environment, water quality, and human health and that it meets TCEQ rules and requirements. To report complaints about the facility, please contact the TCEQ at 1-888-777-3186 to reach the TCEQ region office in your area. Noncompliance with the permit or TCEQ rules may result in enforcement action against the permittee.

**COMMENT 13:**

HRC comments that the applicant has not demonstrated that it will be able to adequately remove pharmaceutical or other contaminants from its discharge.

**RESPONSE 13:**

The TCEQ appreciates the public comment on this issue; however, the TCEQ and the EPA currently have no rules or policies in place to address what are known as “emerging contaminants.” Both agencies are reviewing the issue and expect to be able to address the problem with appropriate controls sometime in the future. However, this issue is currently outside the scope of existing TCEQ regulations.

**CHANGES MADE TO THE DRAFT PERMIT IN RESPONSE TO COMMENT**

No changes to the draft permit have been made in response to public comment.

Respectfully submitted,

Texas Commission on Environmental Quality

Mark R. Vickery, P.G.  
Executive Director

Robert Martinez, Director  
Environmental Law Division

By 

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Environmental Law Division

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REPRESENTING THE  
EXECUTIVE DIRECTOR OF THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

**CERTIFICATE OF SERVICE**

I certify that on January 11, 2010, the "Executive Director's Response to Public Comment" for Permit No. WQ0011787001 was filed with the Texas Commission on Environmental Quality's Office of Chief Clerk.

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

2010 JAN 11 PM 2:33

CHIEF CLERKS OFFICE



Michelle L. Bacon, Staff Attorney  
Environmental Law Division  
State Bar No. 24045436

Bryan W. Shaw, Ph.D., *Chairman*  
Buddy Garcia, *Commissioner*  
Carlos Rubinstein, *Commissioner*  
Mark R. Vickery, P.G., *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

January 12, 2010

TO: Persons on the attached mailing list.

RE: City of Bullard  
TPDES Permit No. WQ0011787001

### **Decision of the Executive Director.**

The executive director has made a decision that the above-referenced permit application meets the requirements of applicable law. **This decision does not authorize construction or operation of any proposed facilities.** Unless a timely request for contested case hearing or reconsideration is received (see below), the TCEQ executive director will act on the application and issue the permit.

Enclosed with this letter is a copy of the Executive Director's Response to Comments. A copy of the complete application, draft permit and related documents, including public comments, is available for review at the TCEQ Central office. A copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at the Cherokee County Courthouse, 201 East Sixth Street, Rusk, Texas.

If you disagree with the executive director's decision, and you believe you are an "affected person" as defined below, you may request a contested case hearing. In addition, anyone may request reconsideration of the executive director's decision. A brief description of the procedures for these two requests follows.

### **How To Request a Contested Case Hearing.**

It is important that your request include all the information that supports your right to a contested case hearing. You must demonstrate that you meet the applicable legal requirements to have your hearing request granted. The commission's consideration of your request will be based on the information you provide.

The request must include the following:

- (1) Your name, address, daytime telephone number, and, if possible, a fax number.
- (2) If the request is made by a group or association, the request must identify:
  - (A) one person by name, address, daytime telephone number, and, if possible, the fax number, of the person who will be responsible for receiving all communications and documents for the group; and
  - (B) one or more members of the group that would otherwise have standing to request a hearing in their own right. The interests the group seeks to protect must relate to the organization's purpose. Neither the claim asserted nor the relief requested must require the participation of the individual members in the case.
- (3) The name of the applicant, the permit number and other numbers listed above so that your request may be processed properly.
- (4) A statement clearly expressing that you are requesting a contested case hearing. For example, the following statement would be sufficient: "I request a contested case hearing."

Your request must demonstrate that you are an **"affected person."** An affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. Your request must describe how and why you would be adversely affected by the proposed facility or activity in a manner not common to the general public. For example, to the extent your request is based on these concerns, you should describe the likely impact on your health, safety, or uses of your property which may be adversely affected by the proposed facility or activities. To demonstrate that you have a personal justiciable interest, you must state, as specifically as you are able, your location and the distance between your location and the proposed facility or activities.

Your request must raise disputed issues of fact that are relevant and material to the commission's decision on this application. The request must be based on issues that were raised during the comment period. The request cannot be based solely on issues raised in comments that have been withdrawn. The enclosed Response to Comments will allow you to determine the issues that were raised during the comment period and whether all comments raising an issue have been withdrawn. The public comments filed for this application are available for review and copying at the Chief Clerk's office at the address below.

To facilitate the commission's determination of the number and scope of issues to be referred to hearing, you should: 1) specify any of the executive director's responses to comments that you dispute; and 2) the factual basis of the dispute. In addition, you should list, to the extent possible, any disputed issues of law or policy.

#### **How To Request Reconsideration of the Executive Director's Decision.**

Unlike a request for a contested case hearing, anyone may request reconsideration of the executive director's decision. A request for reconsideration should contain your name, address, daytime phone number, and, if possible, your fax number. The request must state that you are requesting reconsideration of the executive director's decision, and must explain why you believe the decision should be reconsidered.

### **Deadline for Submitting Requests.**

A request for a contested case hearing or reconsideration of the executive director's decision must be **received by** the Chief Clerk's office no later than **30 calendar days** after the date of this letter. You may submit your request electronically at <http://www.tceq.state.tx.us/about/comments.html> or by mail to the following address:

LaDonna Castañuela, Chief Clerk  
TCEQ, MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087


### **Processing of Requests.**

Timely requests for a contested case hearing or for reconsideration of the executive director's decision will be referred to the alternative dispute resolution director and set on the agenda of one of the commission's regularly scheduled meetings. Additional instructions explaining these procedures will be sent to the attached mailing list when this meeting has been scheduled.

### **How to Obtain Additional Information.**

If you have any questions or need additional information about the procedures described in this letter, please call the Office of Public Assistance, Toll Free, at 1-800-687-4040.

Sincerely,



LaDonna Castañuela  
Chief Clerk

LDC/ms

Enclosures

MAILING LIST  
for  
City of Bullard  
TPDES Permit No. WQ0011787001

FOR THE APPLICANT:

Larry Morgan, City Manager  
City of Bullard  
P.O. Box 107  
Bullard, Texas 75757

Scott Wetzel, P.E.  
BWR Corporation  
810 Hesters Crossing, Suite 225  
Round Rock, Texas 78681

PROTESTANTS/INTERESTED PERSONS:

Eric Allmon  
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